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U.S. BANKRUPTCY COURT
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UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re
WASHINGTON GROUP
INTERNATIONAL, INC., et al.,
Debtors.

Chapter 11
Jointly Administered Under
Case No. BK-N-01-31627-GWZ

**FINDINGS OF FACT AND CONCLUSIONS
OF LAW REGARDING COMPLIANCE OF
THE WASHINGTON AGREEMENT WITH
11 U.S.C. § 1129 (b)(2)(B)(ii)**

On October 10, 2001, the confirmation hearing with respect to the Debtors Second Amended Plan, as Modified (the "Plan") commenced before this Court in the above captioned cases. The issue heard on October 10-12, 2001, was whether or not the agreement of the Debtors with Dennis Washington, as set forth in Section 5.15 of the Debtors' Plan (the "Washington Agreement"), violates 11 U.S.C. § 1129(b)(2)(B)(ii) of the Bankruptcy Code, which codifies the Absolute Priority Rule. This matter originally came before this Court pursuant to a Motion for Order Terminating the Exclusive Right of the Debtors to File and Seek Termination of a Plan of Reorganization filed by the Official Unsecured Creditors' Committee (the "Committee"), which Motion was based, in part, on the Washington Agreement. The Debtors responded by modifying the Plan to provide that, in the event this Court determined that the Washington Agreement violated the Absolute Priority Rule, the Washington Agreement would automatically be deleted from the Plan. In light of that modification this Court deferred consideration of the effect of the Washington Agreement to

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1 the confirmation hearing as the first matter to be heard. After receiving testimony and
2 evidence submitted by the parties, hearing the arguments of counsel, and weighing all the
3 admitted evidence, the Court makes the following findings of fact and conclusions of law:

4 **I. Findings of Fact**

5 1. The Washington Agreement proposes to name Dennis Washington
6 Chairman of the Board of Reorganized WGI upon the Effective Date and to grant him
7 significant financial consideration consisting of options to purchase common stock issued by
8 Reorganized WGI.

9 2. Pursuant to the Washington Agreement, Dennis Washington would
10 receive no other compensation and would not be required to work full time.

11 3. The options to purchase common stock issued by Reorganized WGI to
12 be granted to Dennis Washington under the Washington Agreement have significant value.

13 4. The only quantifiable measurement for conditions to the vesting of
14 Dennis Washington's right to exercise the stock options granted under the Washington
15 Agreement is the passage of time.

16 5. No evidence has been presented to the Court regarding (a) the
17 contributions of the chairman of the board of directors of a company like WGI, (b) what a
18 chairman of the board is paid, (c) what options or incentive plans are provided to them, and
19 (d) the type of evaluation which would occur to fill such a critical position.

20 6. The opportunity offered to Dennis Washington was exclusive under the
21 circumstances.

22 7. The opportunity offered to Dennis Washington was on account of his
23 existing ownership of stock in the Debtors.

24 8. To the extent that any of the foregoing findings of fact constitute
25 conclusions of law they shall be deemed to be conclusions of law.

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1 **II. Conclusions of Law**

2 1. The Supreme Court rejected an absolute interpretation of the New
3 Value Corollary and the Absolute Priority Rule in Bank of America NT & SA v. 203 North
4 LaSalle St. Partnership, 526 U.S. 434 (1999).

5 2. Accordingly, whether an opportunity to purchase or retain an interest in
6 a reorganized debtor given to existing equity where a class of unsecured claims objects is on
7 account of an existing interest is in violation of the Absolute Priority Rule must be
8 considered on a case by case basis under 203 North LaSalle based upon the evidence
9 presented in a particular case.

10 3. The burden of proof is upon the plan proponent to establish that the
11 plan complies with all of the relevant provisions of 11 U.S.C. § 1129 (a) and (b).

12 4. There is a presumption that must be met when a shareholder obtains an
13 equity participation of the reorganized debtor and unsecured creditors remain unpaid.
14 Liberty Nat'l Enterprises v. Ambanc La Mesa Ltd. Partnership (In re Ambanc La Mesa Ltd.
15 Partnership), 115 F.3d 650, 656 (9th Cir. 1997); Northern Pacific Rwy v. Boyd, 228 U.S. 482
16 (1913). Under the facts of these cases, at the very least the burden of persuasion rests upon
17 the Debtors to establish that the Washington Agreement does not violate 11 U.S.C. §
18 1129(b)(2)(B)(ii).

19 5. Under 203 LaSalle, the exclusive opportunity to purchase an interest in
20 a reorganized debtor must be considered property as that term is used in 11 U.S.C. §
21 1129(b)(2)(B)(ii).

22 6. The exclusive opportunity afforded to Dennis Washington under the
23 Washington Agreement was on account of his prior equity interest in the Debtors.

24 7. The exclusive opportunity afforded to Dennis Washington under the
25 Washington Agreement on account of his prior equity interest in the Debtors violates the
26 Absolute Priority Rule as codified in 11 U.S.C. § 1129(b)(2)(B)(ii).

27 8. The Court concludes that the Washington Agreement as incorporated in
28 Section 5.15 of the Debtors' Second Amended Joint Plan of Reorganization does not comply

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1 with 11 U.S.C. § 1129(b)(2)(B)(ii).

2 9. To the extent any of the foregoing conclusions of law constitute
3 findings of fact they shall be deemed to be findings of fact.
4

5 DATED: _____, 2001

UNITED STATES BANKRUPTCY JUDGE

7 Submitted by:

8 MURPHY SHENEMAN JULIAN & ROGERS
9 A Professional Corporation

10 By: Patrick A. Murphy
11 Patrick A. Murphy
12 Attorneys for Official Unsecured
Creditors' Committee

13 Approved/Disapproved

14 SKADDEN, ARPS, SLATE, MEAGHER & FLOM and LIONEL SAWYER & COLLINS

15 By: _____
16 Timothy R. Pohl
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19 By: David C. McElhinney
20 Julia Frost-Davies
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27 By: _____
28 Janet L. Chubb
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Counsel to Mitsubishi Heavy Industries, Ltd., et al.

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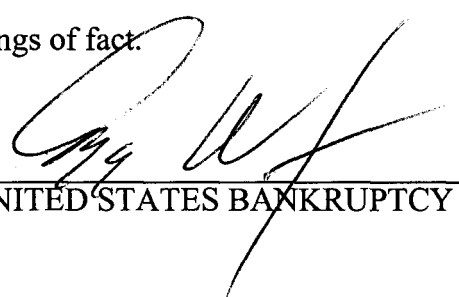
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